

No. 2954

United States
Circuit Court of Appeals ⁸

For the Ninth Circuit

OCCIDENTAL CONSTRUCTION
COMPANY [A Corporation],
Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record

Upon Writ of Error to the United States District Court
for the Southern District of California, Southern Division

Filed

MAR 10 1917

F. D. Monkton,
Clerk.

No. _____

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1

*In the United States Circuit Court of Appeals for the
Ninth Circuit.*

OCCIDENTAL CONSTRUCTION COMPANY, a cor-
poration, *Plaintiff,*

vs.

No.——

UNITED STATES OF AMERICA,

Defendants.

2

WRIT OF ERROR.

UNITED STATES OF AMERICA,

Ninth Judicial Circuit.—SS.

The President of the United States to the Honorable
Judge of the District Court of the United States for the
Southern District of California, Southern Division,

GREETING:

3

Because in the record and proceedings, as also in the
rendition of the judgment, of a plea, which is in the said
District Court, before you, or some of you, between the
Occidental Construction Company, a corporation, plain-
tiff, and the United States of America, defendant, a
manifest error hath happened to the great damage of the
said plaintiff, the Occidental Construction Company, as
by its complaint appears, we being willing that error, if
any hath been, should be duly corrected and full and
speedy justice done to the parties aforesaid in this be-
half, do command you, if judgment be therein given, that
then under your seal distinctly and openly you send the

4 record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, in said Circuit, within thirty (30) days from the date hereof, in the said Circuit Court of Appeals to be then and there held, that the record and proceedings aforesaid being inspected the said Circuit Court of Appeals may cause further to be done therein to correct that error, which of right and according to the law and custom of the United States should be done.

5 WITNESS the Honorable Edward Douglass White, Chief Justice of the United States, this 19th day of February, A. D. 1917, and in the one hundred and forty-first year of the United States of America.

WM. M. VAN DYKE,
Clerk U. S. District Court, Southern District of California.

By LESLIE S. COLYER. *Deputy.*

The foregoing writ is hereby allowed.

(Seal)

6 OSCAR A. TRIPPET,
U. S. District Judge.

I hereby certify that a copy of the within writ of error was on the 19th day of February, 1917, lodged in the Clerk's Office of the said United States District Court for the Southern District of California, Southern Division, for the said defendants in error.

WM. M. VAN DYKE,
Clerk U. S. District Court, Southern District of California.

(SEAL)

By LESLIE S. COLYER, *Deputy.*

7 Endorsements: Original 396 Civil.

*In the United States Circuit Court of Appeals for the
Ninth Circuit.*

OCCIDENTAL CONSTRUCTION COMPANY,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

WRIT OF ERROR.

8 Filed Feb. 19, 1917.

WM. M. VAN DYKE, *Clerk.*

By LESLIE S. COLYER, *Deputy Clerk.*

M. M. Meyers and Charles E. Dow, 1022-25 Citizens
Nat. Bk. Bldg., Los Angeles, Cal., Attys. for Plff.

10 *In the United States Circuit Court of Appeals for the
Ninth Circuit.*

OCCIDENTAL CONSTRUCTION COMPANY, a cor-
poration,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

No.———

CITATION.

11

To UNITED STATES OF AMERICA, GREETING:

You are hereby cited and admonished to be and ap-
pear at a session of the United States Circuit Court of
Appeals for the Ninth Circuit, to be held at the City and
County of San Francisco, State of California, in said
Circuit, on the 20th day of March, 1917, pursuant to a
Writ of Error, filed in the Clerk's office of the District
Court of the United States for the Southern District of
California, Southern Division thereof, wherein you are
12 Defendant in Error and the Occidental Construction
Company is Plaintiff in Error, to show cause, if any
there be, why, the judgment rendered for said Occiden-
tal Construction Company, as in said Writ of Error
mentioned, should not be corrected, and why speedy jus-
tice should not be done to the parties in that behalf.

WITNESS the Honorable Oscar A. Trippet, Dis-
trict Judge of the United States, sitting as Circuit Judge
at Los Angeles, California, within the said Circuit, this
19 day of February, in the year of our Lord 1917,

13 and in the Independence of the United States of America
the 141st.

TRIPPET,

United States District Judge, Sitting as Circuit Judge.

Endorsements: Original No. 396 Civil.

*In the United States Circuit Court of Appeals for the
Ninth Circuit.*

OCCIDENTAL CONSTRUCTION COMPANY,

14

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

CITATION.

Received copy of the within citation this 19 day
of February, 1917.

ROBERT O'CONNOR, *Asst. U. S. Atty.,*
Attorney for Defendant.

15

Filed Feb. 19, 1917.

WM. M. VAN DYKE, *Clerk.*

By CHAS. N. WILLIAMS, *Deputy Clerk.*

M. M. Meyers and Charles E. Dow, 1022-25 Citizens
Nat. Bk. Bldg., Los Angeles, Cal., Attys. for Plff.

16 *In the District Court of the United States, Southern
District of California, Southern Division.*

OCCIDENTAL CONSTRUCTION COMPANY, a corporation,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

17 NAMES AND ADDRESSES OF ATTORNEYS OF
RECORD.

M. M. Meyers and Charles E. Dow, 1022-1025 Citizens National Bank Building, Los Angeles, California,
Attorneys for Plaintiff in Error.

Albert Schoonover and Robert O'Connor, Federal Building, Los Angeles, California,
Attorneys for Defendant in Error.

18

19 *In the District Court of the United States, for the Southern District of California.*

OCCIDENTAL CONSTRUCTION COMPANY, a Corporation organized under and by virtue of the laws of the State of California, a citizen of said State, having its principal office at Los Angeles, in the County of Los Angeles, State of California,
Plaintiff,

vs.

20 UNITED STATES OF AMERICA,
Defendant.

ENGROSSED AMENDED PETITION FOR MONEY
ON CONTRACT.

Comes now the plaintiff and complains of the defendant above named, and for cause of action alleges:

I.

21 That the Occidental Construction Company is a corporation organized under and by virtue of the laws of the State of California, and has its principal office at Los Angeles, in the County of Los Angeles, State of California, and is a citizen of said State.

II.

That on or about the 9th day of January, 1913, at Los Angeles, in the said County of Los Angeles, State of California, the plaintiff entered into an agreement with the defendant whereby the plaintiff leased and hired to the defendant certain mules and harness (the said har-

22 ness being therein and sometimes herein designated as
“equipment”), a copy of which said agreement, together
with the itemized list of the said mules and harness at-
tached thereto, is hereunto annexed, marked Exhibit
“A”, and made a part hereof, and plaintiff adopts and
makes the same a part hereof as fully as though herein
set forth, and alleges that the said agreement was in
words and figures as set forth in the said Exhibit “A.”

III.

23 That the defendant kept and retained the said mules
and harness, pursuant to the said agreement, until the
26th day of April, 1913; that the defendant paid for the
rental of said mules and harness for all of said time up
to and including the 31st day of March, 1913, and no
more, except as hereinafter stated.

IV.

24 That the said contract provided that the defendant
should, and the defendant therein agreed to, pay for
each and every head of mules crippled, injured or killed.
That one (1) of the said mules, to-wit: that certain mule
set out in the list attached to said contract as No. 15,
was killed, to-wit: drowned, on or about the 10th day of
April, 1913, while then and there in the possession of
the defendant, and that the same was never returned to
the plaintiff; that the reasonable value of the said mule
so killed was the sum of One Hundred Seventy-five Dol-
lars (\$175.00).

25

V.

26

That the hire or rent of the said mule so killed as aforesaid for the period from the 1st day of April, 1913, to the 10th day of April, 1913 (the day on which said mule was killed), both inclusive, at the agreed rate of Ten Dollars (\$10.00) per month was the sum of Three & thirty-three-hundredths Dollars (\$3.33); that the hire or rent of the remaining ninety-nine (99) mules so hired as per the terms of said contract and used by the defendant for the period from the 1st day of April, 1913, to the 26th day of April, 1913, both inclusive, at the agreed rate of Ten Dollars (\$10.00) per month was the sum of Eight Hundred Fifty-eight Dollars (\$858.00), making in all the sum of Eight Hundred Sixty-one & thirty-three-hundredths Dollars (\$861.33) for such hire and rental.

VI.

27

That the said contract provided that defendant should, and the defendant therein agreed to, take extra care of the said mules and equipment, and to return and deliver the said mules and equipment to the plaintiff herein at its yard in the City of Los Angeles, in the County and State aforesaid, at the termination of the lease and hiring in as good condition as when taken; that the defendant did not take extra care of the said mules and equipment, as provided in the said agreement, and did not return the said mules and equipment to the plaintiff in as good order as when received; that the said mules upon their return to the plaintiff as above set forth were

28 all of them in very poor condition, were emaciated and weak, and the plaintiff could not use, nor let the said mules to be used, nor any of them, on account of such poor, weak and emaciated condition, resulting from such lack of care as aforesaid, until the 1st day of June, 1913; that in order to restore the said mules to the condition in which they were when taken by the defendant plaintiff was compelled to allow the said mules to rest, and also to feed and care for them, to and including the 31st day of May, 1913.

29

VII.

That the hire or rent of the said ninety-nine (99) mules and harness from the 26th day of April, 1913, to the 31st day of May, 1913, inclusive, during which time the plaintiff was deprived of the use of the said mules by reason of their poor, weak and emaciated condition as aforesaid, at the agreed rate of Ten Dollars (\$10.00) per month, was the sum of Eleven Hundred Twenty-two Dollars (\$1122.00); that the reasonable value of the care and feed given to, bestowed upon and furnished to the said ninety-nine (99) mules for the period from the 26th day of April, 1913, to the 31st day of May, 1913, inclusive, during which time the plaintiff was deprived of the use of the said mules and harness, and which was necessary in order to put the said mules in proper workable condition, was and is the sum of Thirteen Hundred Fifty-eight Dollars (\$1358.00); that plaintiff paid, laid out and expended for veterinary services in and about the care of the said mules for and on account of the sickness and

30

31 injury by the lack of care by the defendant, as above set forth, the sum of Twenty-four & fifty-hundredths Dollars (\$24.50).

VIII.

That said contract provided that the defendant should and would return the said mules and harness to the plaintiff at its yards in the City of Los Angeles, State of California; that the defendant brought the said mules to the Santa Fe stock yards in the said City of
32 Los Angeles and thereupon requested this plaintiff to unload the said mules and take them therefrom to the yards of the plaintiff in the said City of Los Angeles, and at such special instance and request of the defendant the plaintiff caused said mules to be unloaded at the Santa Fe stock yards in the said City of Los Angeles and taken therefrom to the yards of the plaintiff in the said City of Los Angeles, and paid, laid out and expended therefor the sum of Three Dollars (\$3.00).

33

IX.

That said contract further provided that in case any of the said equipment with the mules, to-wit: the said harness, should be lost, destroyed or rendered unfit for service, or not returned, the defendant would pay the plaintiff the full value thereof; that the defendant did not return to the plaintiff certain of the said harness, to-wit: 1 chain harness, 8 bridles, 1 back & hip strap, 6 halters, 10 coupling chains, 10 breast straps, 18 pipes 42" and 2 backbands 4½"; that the value of the

34 said harness so not returned was and is the sum of Forty-eight & forty-two hundredths Dollars (\$48.42).

X.

That the said sums amount in all to Three Thousand Five Hundred Ninety-two & twenty-five-hundredths Dollars (\$3592.25); that no part of the same has been paid except the sum of Four Hundred Sixty-five & sixty-six-hundredths Dollars (\$465.66), on or about the 13th day of November, 1913, though payment thereof was often
35 requested and demanded of the defendant by the plaintiff.

XI.

That the said contract further provided that in case said defendant should or did fail to comply with, or should violate any of the terms, provisions or conditions of the said contract, or fail to pay any portion of the said rent or hire when due thereon, as provided in the said contract, the defendant should pay any and all necessary and proper attorney's fees expended in any
36 action for the enforcement of any of the conditions or provisions of the said contract; that plaintiff incurred attorney's fees in and about this action for the enforcement of the conditions and provisions of this contract hereinabove set forth in the sum of Five Hundred Dollars (\$500.00), the reasonable value thereof, no part of which has been paid by the said defendant.

And for a further and second cause of action plaintiff alleges:

37

I.

That the Occidental Construction Company is a corporation organized under and by virtue of the laws of the State of California, and has its principal office at Los Angeles, in the County of Los Angeles, State of California, and is a citizen of said State.

II.

38

39

That on or about the 10th day of January, 1913, at Los Angeles, in the County of Los Angeles, State of California, the plaintiff entered into an agreement with the defendant whereby the plaintiff leased to the defendant certain personal property, designated in the said agreement as "grading equipment," a copy of which said agreement, together with the itemized list of the said grading equipment attached thereto, is hereunto annexed, marked Exhibit "B", and made a part hereof, and plaintiff adopts and makes the same a part hereof as fully as though herein set forth, and alleges that the said agreement was in words and figures as set forth in the said Exhibit "B".

III.

That the said agreement provided that the defendant should, and the defendant therein agreed to, take extra care of the said grading equipment and to keep the same in good order or repair at all times at its own expense and charges, and at the termination of the said lease or hiring to return the same to the plaintiff at its yards in the City of Los Angeles, County of Los Angeles, State of California, in as good condition as when

40 taken, ordinary wear and tear from use only excepted; and also further provided that in case any of said grading equipment should be lost, destroyed or rendered unfit for service or not returned to the plaintiff said defendant would pay to the plaintiff the full value of such portion thereof as should not be returned, and would also pay for any damage done to the said grading equipment; that the defendant failed to return a certain portion of said grading equipment, to-wit: the articles set
41 out and enumerated in the list hereunto attached marked Exhibit "C" and made a part hereof as fully as though herein set forth; that the value of the said portion of the said grading equipment so not returned was and is the sum of Forty-two & seventy-eight-hundredths Dollars (\$42.78); that a certain portion of the said grading equipment was not returned to the plaintiff in as good condition as when taken; ordinary wear and tear from use excepted; that the defendant did not keep the same in good order and repair and it was necessary for the
42 plaintiff to have the said grading equipment repaired because of the failure of the defendant to keep the same in good order and repair, and the plaintiff laid out and expended for such repairs so made on account of such failure of the defendant the sum of Seventy & six-hundredths Dollars (\$70.06), all as set forth in the itemized statement thereof and the list hereunto attached marked Exhibit "D" and made a part hereof as fully as though herein set forth, to the damage of the plaintiff in the sum of Seventy & six-hundredths Dollars (\$70.06).

43

IV.

That said contract provided that the defendant should and would return the said grading equipment to the plaintiff at its yards in the City of Los Angeles, County of Los Angeles, State of California; that the defendant brought the said grading equipment to the Santa Fe Railway Spur in the said City of Los Angeles and thereupon requested the plaintiff to unload the said equipment and take the same therefrom to the yards of the plaintiff in the said City of Los Angeles, and at such
44 special instance and request of the defendant the plaintiff caused the said grading equipment to be unloaded at the Santa Fe Railway Spur in the said City of Los Angeles and taken therefrom to the yards of the plaintiff in the said City of Los Angeles, and the plaintiff paid, laid out and expended therefor the sum of Twelve & fifty-hundredths Dollars (\$12.50).

V.

That the said sums amount in all to the sum of One
45 Hundred Twenty-five & thirty-four-hundredths Dollars (\$125.34), no part of which has been paid, though payment thereof was often requested and demanded of the defendant by the plaintiff.

VI.

That the said contract further provided that in case said defendant should or did fail to comply with, or should violate any of the terms, provisions or conditions of the said contract, or fail to pay any portion of the said rent or hire when due thereon, as provided

46 in the said contract, the defendant should and would pay any and all necessary and proper attorney's fees expended in any action for the enforcement of any of the conditions or provisions of the said contract; that plaintiff incurred attorney's fees in and about this action for the enforcement of the conditions and provisions of this contract as hereinbefore set forth in the sum of One Hundred Dollars (\$100.00), no part of which has been paid by the said defendant.

47

And for a further and third cause of action plaintiff complains of the defendant and alleges:

I.

Plaintiff adopts paragraphs I, II and III of the first cause of action hereinabove set forth and makes them a part of this third cause of action as fully and completely as though herein specifically set forth.

II.

48 That the said contract provided that defendant should, and the defendant therein agreed to, take extra care of the said mules and equipment, and to return and deliver the said mules and equipment to the plaintiff herein at its yards in the City of Los Angeles, in the County and State aforesaid, at the termination of the lease and hiring in as good condition as when taken; that the defendant did not take such care of said mules and harness, but took so little care thereof that they became injured and deteriorated in value, to the damage of the plaintiff in the sum of Two Thousand Six Hundred

49 Ninety-nine & seventeen-hundredths Dollars (\$2699.17).

III.

That defendant has not paid the said sum of Two Thousand Six Hundred Ninety-nine & seventeen-hundredths Dollars (\$2699.17), nor any part thereof.

And for a further and fourth cause of action plaintiff complains of the defendant and alleges:

I.

50 Plaintiff adopts Paragraphs I and II of the second cause of action hereinabove set forth and makes them a part of this fourth cause of action as fully and completely as though herein specifically set forth.

II.

51 That the said agreement provided that the defendant should, and the defendant therein agreed to, take extra care of the said grading equipment and to keep the same in good order or repair at all times at its own expense and charges, and at the termination of the said lease or hiring to return the same to the plaintiff at its yards in the City of Los Angeles, County of Los Angeles, State of California, in as good condition as when taken, ordinary wear and tear from use only excepted; and also further provided that in case any of said grading equipment should be lost, destroyed or rendered unfit for service or not returned to the plaintiff said defendant would pay to the plaintiff the full value of such portion thereof as should not be returned, and would also pay for any damage done to the said grading equip-

52 ment; that the defendant did not take such care of said grading equipment, but took so little care thereof that the same became injured and deteriorated in value, to the damage of the plaintiff in the sum of One Hundred Twenty-five & thirty-four-hundredths Dollars (\$125.34).

III.

That defendant has not paid the said sum of One Hundred Twenty-five & thirty-four-hundredths Dollars (\$125.34), nor any part thereof.

53

And for a further and fifth cause of action plaintiff complains of the defendant and alleges.

I.

Plaintiff adopts Paragraph I of the first cause of action hereinbefore set forth and makes the same a part of this fifth cause of action as fully and completely as though herein specifically set forth.

II.

54

That on or about the 9th day of January, 1913, at Los Angeles, in the County of Los Angeles, State of California, the plaintiff leased, hired and delivered to the defendant one hundred (100) head of mules and certain harness therefor for use by the defendant in certain work on the Mohave Indian Reservation in the State of Arizona. An itemized list of said mules and harness is attached to Exhibit "A" annexed to this complaint, which said list is hereby referred to and made a part hereof. Said mules when so leased, hired and

55 delivered by plaintiff to defendant were in good condition and were strong and fit for work, and said harness was in good condition and fit for use.

III.

That on or about the 10th day of April, 1913, one (1) of said mules was drowned while in the possession of the defendant; that on or about the 26th day of April, 1913, the ninety-nine (99) mules remaining and said harness were returned by defendant to plaintiff; 56 that defendant paid plaintiff for the use of said mules and harness up to and including the 31st day of March, 1913, but has not paid plaintiff for the use of the same for any period thereafter; that the reasonable value of the use of said mule that was drowned and harness therefor from April 1st, 1913, to April 10, 1913, is the sum of Three & thirty-three-hundredths Dollars (\$3.33); that the reasonable value of the use of said ninety-nine (99) mules remaining and the harness therefor from said 1st day of April, 1913, to said 26th day of April, 57 1913, both inclusive, is the sum of Eight Hundred Fifty-eight Dollars (\$858.00), making in all Eight Hundred Sixty-one and thirty-three hundredths Dollars (\$861.33).

IV.

That defendant failed to take proper care of said mules and failed to return said mules to plaintiff in good condition, and because of defendant's failure to take proper care of said mules they were, when returned to plaintiff, in poor condition and weak and unfit for use and work and in such condition that plaintiff was un-

58 able to use them for the period from the 26th day of
April, 1913, to and including the 31st day of May, 1913;
that because of the weak and emaciated condition of said
mules when returned to plaintiff by defendant, plaintiff
was obliged to expend, and did expend, upon the care
and treatment of said mules, and for and on account of
the sickness, weakness and injury of said mules caused
by the lack of proper care of same on the part of the de-
fendant as hereinbefore set forth, the sum of Twenty-
59 four & fifty-hundredths Dollars (\$24.50) for veterinary
services, and plaintiff was obliged to feed and care for
said mules from the 26th day of April, 1913, to and in-
cluding the 31st day of May, 1913, and the cost of said
feed and care, in addition to said veterinary services,
was the sum of Thirteen Hundred Fifty-eight Dollars'
(\$1358.00). Plaintiff was deprived of the use of said
mules on account of their said condition from the 26th
day of April, 1913, to and including the 31st day of May,
1913, and the reasonable value of said use was the sum
60 of Fourteen Hundred Forty-three & seventy-five-hun-
dredths Dollars (\$1443.75).

V.

That after plaintiff had bestowed said care and said
veterinary services upon said mules as aforesaid, and
after said mules had been rested and cared for and fed
as aforesaid, said mules were, and continued to be, be-
cause of the said failure of defendant to give them prop-
er care, of less value than they were at the time said
mules were entrusted to defendant, and said mules had,

61 because of said improper treatment, deteriorated in value and were of less value to the extent of Seven Hundred Forty-two & fifty-hundredths Dollars (\$742.50) than they were at the time said mules were hired by plaintiff to defendant, and plaintiff was damaged by said deterioration and loss of value to the amount of Seven Hundred Forty-two & fifty-hundredths Dollars (\$742.50).

VI.

62 That defendant did not feed and care for said mules during a part of the period from the time when defendant received said mules to the time said mules were returned by defendant to plaintiff, and plaintiff was obliged to pay, and did pay, for feed for said mules and transportation of the feed to the place where said mules were, and for care of said mules, during a part of said period, to-wit: from the 14th day of April to the 21st day of April, 1913, the sum of Two Hundred Nine & thirty-hundredths Dollars (\$209.30) for feed, the sum of
63 Fifty-three & fifty-hundredths Dollars (\$53.50 for transportation of the same, and the sum of One Hundred Twenty-six Dollars (\$126.00) for care of said mules.

VII.

That said sums amount in all to Four Thousand Eight Hundred Eighteen & eighty-eight-hundredths Dollars (\$4818.88); that no part of the same has been paid except the sum of Four Hundred Sixty-five & sixty-six-hundredths Dollars (\$465.66) paid on or about the 13th

64 day of November, 1913, and there is now due, owing and unpaid on account thereof the sum of Four Thousand Three Hundred Fifty-three & twenty-two-hundredths Dollars (\$4353.22).

And for a further and sixth cause of action plaintiff complains of the defendant and alleges :

I.

Plaintiff adopts Paragraph I of the first cause of
65 action hereinabove set forth and makes it a part of this sixth cause of action as fully and completely as though herein specifically set forth.

II.

That between the 9th day of January, 1913, and the 1st day of July, 1913, both inclusive, at Los Angeles, in the County of Los Angeles, State of California, the defendant became indebted to the plaintiff for goods, wares and merchandise, and one (1) mule, sold and delivered by the plaintiff to the defendant, and for work
66 and labor done and performed by the plaintiff for the defendant, and for money paid, laid out and expended by the plaintiff for the defendant, all at its special instance and request, all of the reasonable value of Three Hundred Fifty-one & seventy-six-hundredths Dollars (\$351.76).

III.

That defendant has not paid the said sum of Three Hundred Fifty-one & seventy-six-hundredths Dollars (\$351.76), nor any part thereof.

67 And for a further and seventh cause of action plaintiff complains of the defendant and alleges:

I.

Plaintiff adopts Paragraphs I and II of the first cause of action hereinabove set forth and makes them a part of this seventh cause of action as fully and completely as though herein specifically set forth.

II.

68 Plaintiff adopts Paragraph II of the second clause of action hereinabove set forth and makes it a part of this seventh cause of action as fully and completely as though herein specifically set forth.

III.

69 That while the said mules and their equipment and the said grading equipment were in the possession and under the control of the defendant, by its agents and representatives, the said defendant permitted the same to be taken out of its possession for and on account of an alleged claim for taxes claimed by the County Tax Collector of the County of Mohave, State of Arizona, and that in order to obtain the release of the said mules and their equipment and the said grading equipment from the said Tax Collector the plaintiff was compelled to, and did, pay to the said Tax Collector the sum of Eight Hundred Twenty-seven & ninety-four hundredths Dollars (\$827.94); that such payment was made under protest, and plaintiff reserved all of its rights in and about the said matter.

70

IV.

That defendant has not paid the said sum of Eight Hundred Twenty-seven & ninety-four-hundredths Dollars (\$827.94), nor any part thereof except the sum of Two Hundred Twenty-five Dollars (\$225.00) paid by the County Tax Collector of Mohave County, Arizona, on or about the 6th day of December, 1913.

V.

71

That in order to secure such release of the said mules, their equipment and the said grading equipment plaintiff incurred an obligation for attorney's fees in the sum of One Hundred Fifty Dollars (\$150.00).

VI.

That defendant has not paid the said sum of One Hundred Fifty Dollars (\$150.00), nor any part thereof.

And for a further and eighth cause of action plaintiff complains of the defendant and alleges:

72

I.

That on or about the 9th day of January, 1913, at Los Angeles, in the County of Los Angeles, State of California, the plaintiff leased, hired and delivered to the defendant one hundred (100) head of mules and certain harness therefor for use by the defendant in certain work on the Mohave Indian Reservation in the State of Arizona. An itemized list of said mules and harness is attached to Exhibit "A" annexed to this complaint, which said list is hereby referred to and make a part hereof. Said mules when so leased, hired and delivered

73 by plaintiff to defendant were in good condition and were strong and fit for work, and said harness and said grading equipment were in good condition and fit for use.

III.

That on or about the 10th day of April, 1913, one (1) of said mules was drowned while in the possession of defendant; that on or about the 26th day of April, 1913, the ninety-nine (99) mules remaining and said harness were returned by defendant to plaintiff.

IV.

That defendant failed to take proper care of said mules and failed to return said mules to plaintiff in good condition, and because of defendant's failure to properly care for said mules they were, when returned to plaintiff, in poor condition and weak and unfit for use and work and in such condition that said mules had deteriorated in value and were of less value to the extent of Thirty-nine Hundred and Sixty Dollars (\$3960.00) than they were at the time said mules were hired and delivered by plaintiff to defendant, and plaintiff was damaged thereby to the amount of Thirty-nine Hundred Sixty Dollars (\$3960.00).

75 WHEREFORE, plaintiff prays judgment against the defendant for the sum of Three Thousand One Hundred Twenty-six & fifty-nine-hundredths Dollars (\$3126.59), and the sum of Five Hundred Dollars (\$500.00) attorney's fees; and for the sum of One Hundred Twenty-five & thirty-four-hundredths Dollars

76 (\$125.34), and the sum of One Hundred Dollars (\$100.00) attorney's fees; and for the sum of Two Thousand Six Hundred Ninety-nine & seventeen-hundredths Dollars (\$2699.17); and for the sum of One Hundred Twenty-five & thirty-four hundredths Dollars (\$125.34); and for the sum of Six Hundred Seventeen & sixty-seven-hundredths Dollars (\$617.67); and for the sum of Three Hundred Fifty-one & seventy-six-hundredths Dollars (\$351.76); and for the sum of Six Hundred Two & ninety-four-hundredths Dollars (\$602.94), and the sum of
77 One Hundred Fifty Dollars (\$150.00) attorney's fees; and for costs of suit; and for such other and further relief as to this Honorable Court may seem meet and just.

M. M. MEYERS,

CHARLES E. DOW,

Attorneys for Plaintiff.

79

EXHIBIT "A"

This Agreement, Made and entered into this 9th day of January, 1913, by and between the OCCIDENTAL CONSTRUCTION COMPANY, a corporation, party of the first part, and U. S. Indian Service, party of the second part, WITNESSETH:—

80 SAID PARTY OF THE FIRST PART, in consideration of the payments to be made and the covenants to be kept, done and performed by the party of the second part as herein set forth, agrees to and does hereby lease to the party of the second part certain mules, and certain equipment to be used in connection with the grading work to be done by said party of the second part and in the working of and caring for said mules, consisting of One hundred (100) head of mules and one hundred & two (102) chain harness as per itemized list thereof hereunto attached and made a part hereof; said mules and equipment to be used at or near Mohave India Reservn., and to be delivered to the party of the second
81 part at the yard of said party of the first part in the City of Los Angeles, California, at the rate of Ten & no-hundredths Dollars (\$10.00) per month per head of mules including the equipment delivered therewith, until such time as this lease shall be terminated by notice given as herein provided.

AND SAID PARTY OF THE SECOND PART does hereby agree to pay to the party of the first part for the use and hire of said mules and said equipment at the said rate of Ten & no-hundredths Dollars (\$10.00)

82 per month per head of mules, payable on the first day
of each and every month, commencing with the 10th day
of January, 1913, for the hire of said mules and equip-
ment from the time of delivery thereof, or proportionate
amount for any part of any month subsequent to the de-
livery thereof; the delivery and receipt of which said
mules and equipment specified in said Itemized List is
hereby acknowledged by said party of the second part;
all such payments to be made at the office of said party
83 of the first part in the said City of Los Angeles, Cali-
fornia.

AND SAID PARTY OF THE SECOND PART
does agree to take extra care of the said mules, to keep
them well shod when necessary, and to feed, care for,
keep and maintain the said mules, during the said hiring,
at its own expense and charges, and to return the said
mules to the party of the first part at said City of Los
Angeles at the termination of said hiring, and does agree
to pay for each and every head of mules crippled, injur-
84 ed or killed. Should any of said mules be taken sick,
the party of the second part does agree to furnish im-
mediate proper and skilled medical attention and neces-
sary medicines, and such proper and skilled medical at-
tention and care during the continuance of such sickness,
and also to notify the party of the first part at once of the
full particulars of such sickness; and should any of said
mules die by reason of the failure of said party of the
second part to perform any of the provisions of this
agreement, then said party of the second part shall and

85 will pay full value for the same.

Should any of the said mules die from any cause whatsoever, under any conditions, said party of the second part does hereby covenant and agree to immediately notify the party of the first part of the cause of such death and to send to the party of the first part a piece of the hide, six inches (6 in.) square, cut from the dead mule and showing its brand "O" on the right hip, or right cheek, or both.

86 SAID PARTY OF THE SECOND PART does agree to take extra care of the said equipment and to keep the same in good order at all times, at its own expense and charges, and in case any of said equipment should be lost, destroyed or rendered unfit for service, or not returned, said party of the second part shall and will pay to said party of the first part the full value of the same, and shall also pay for any damage to the said equipment; and said party of the second part does agree to return and deliver the said mules and said equip-
87 ment to the party of the first part, at its yard in said City of Los Angeles, at the termination of the term of lease and hiring as herein provided, in as good condition as when taken.

SAID PARTY OF THE SECOND PART does further agree that it will not remove the said mules or said equipment from the vicinity of said place nor sublet nor hire out any of the said mules or equipment or any part thereof, without the written consent of the party of the first part; and does further agree that it will produce

88 and exhibit to the party of the first part or its agent all and any of the said mules and equipment, at any time when so requested, on the work at the place above mentioned.

IT IS FURTHER PROVIDED AND AGREED that either party hereto may terminate this lease by giving a written notice of such termination, said notice to be delivered to the other party at least two (2) days prior to such termination, it being understood that this lease and hiring shall continue and be in full force and effect
89 until so terminated by the giving of such notice, except as herein provided.

IT IS UNDERSTOOD AND AGREED that in case said party of the second part shall or does fail to comply with or shall violate, any of the terms, conditions or provisions of this contract, or fail to pay any portion of the said rent or hire when due thereon, as herein provided, or whenever said party of the first part shall deem it to its interests so to do in order to secure itself against
90 loss, said party of the first part may take possession of any or all of said mules and equipment wherever found, and terminate the period of said hiring, and said party of the second part shall and will pay any and all necessary and proper costs and expenses incurred in and about the re-taking of the said mules and equipment and the return of the same to said City of Los Angeles, including attorney's fees expended in any action that may be instituted for the recovery of any of said property or for the enforcement of any of the provisions or conditions of this contract.

91 IT IS FURTHER PROVIDED AND AGREED that nothing in this agreement shall be construed as vesting in the said party of the second part any title, legal or equitable, in or to any of the above mentioned property, and said party of the second part does hereby waive any and all rights under and by virtue of the exemption laws of the State of California or any other state or country, as to any judgment secured by the party of the first part against it for or on account of this agreement.

92 IT IS UNDERSTOOD AND AGREED that all the mules and equipment leased by the party of the first part to the party of the second part hereunder shall be kept in one camp, and entirely separate and apart from any and all other camps and any and all other mules and equipment.

IN WITNESS WHEREOF, The said parties hereto have duly executed these presents, IN DUPLICATE, the day and year first above written.

93 No stock Received or Delivered on Sunday or Between 4 P. M. and 8 A. M.

OCCIDENTAL CONSTRUCTION COMPANY

By W. W. BRIER, *Pres.*

Party of the First Part.

UNITED STATES INDIAN SERVICE

By HUGH P. COULTIS, *Clerk & Spl. Disb. Agent,*

Party of the Second Part.

EXHIBIT "B"

This agreement, Made and entered into this 10th day of January, 1913, by and between the OCCIDENTAL CONSTRUCTION COMPANY, a corporation, party of the first part, and U. S. Indian Service, party of the second part, WITNESSETH:—

SAID PARTY OF THE FIRST PART, in consideration of the payments to be made and the covenants to be kept, done and performed by the party of the second
95 part as herein set forth, agrees to and does hereby lease to the party of the second part that certain equipment, consisting of grading equipment as per itemized list hereunto attached and made a part hereof, said equipment to be used at or near Mohave Indian Reservation, in connection with grading work to be done by said party of the second part, at the rate of Two hundred & seventy-three & twenty-hundredths Dollars (\$273.20) per month, until such time as this lease shall be terminated by notice
as herein provided.

96

AND SAID PARTY OF THE SECOND PART does hereby acknowledge the receipt in good order of the said equipment so set forth in said Itemized List hereunto attached, and does agree to pay for the use and hire thereof at the rate of Two hundred & seventy-three & twenty-hundredths Dollars (\$273.20) per month, payable on the first day of each and every month commencing with the 11th day of January, 1913, for the use and hire thereof, or proportionate amount of any part of any month of the hiring of such equipment, all such pay-

97 ments to be made at the office of the party of the first part in the City of Los Angeles, California.

SAID PARTY OF THE SECOND PART does agree to take extra care of the said equipment and to keep the same in good order and repair at all times, at its own expense and charges, and in case any of said equipment should be lost, destroyed or rendered unfit for service, or not returned, said party of the second part shall and will pay to said party of the first part the full value of the same, and shall also pay for any damage to the said equipment; and said party of the second part does agree to return and deliver the said equipment to the party of the first part, at its yard in said City of Los Angeles, at the termination of the term of lease and hiring as herein provided, in as good condition as when taken, ordinary wear and tear from use only excepted.

99 SAID PARTY OF THE SECOND PART does further agree that it will not remove the said equipment from the vicinity of said place, nor sub-let nor hire out the said equipment or any part thereof, without the written consent of the party of the first part; and does further agree that it will produce and exhibit to the party of the first part or its agent all and any of the said equipment, at any time when so requested, on the work at the place above mentioned.

IT IS FURTHER PROVIDED AND AGREED that either party hereto may terminate this lease by giving a written notice of such termination, said notice

100 to be delivered to the other party at least ten (10) days prior to such termination, it being understood that this lease and hiring shall continue and be in full force and effect until so terminated by the giving of such notice, except as herein provided.

IT IS UNDERSTOOD AND AGREED that in case the said party of the second part shall or does fail to comply with, or shall violate, any of the terms, conditions or provisions of this contract, or fail to pay any
101 portion of the said rent or hire when due thereon, as herein provided, or whenever said party of the first part shall deem it to its interest so to do to secure itself against loss, said party of the first part may take possession of any or all of the said equipment wherever found, and terminate the period of said hiring, and said party of the second part shall and will pay any and all necessary and proper costs and expenses incurred in and about the re-taking of the said equipment and the
102 return of the same to said City of Los Angeles, including attorney's fees expended in any action that may be instituted for the recovery of any of said property or for the enforcement of any of the provisions or conditions of this contract.

IT IS FURTHER PROVIDED AND AGREED that nothing in this agreement shall be construed as vesting in the said party of the second part any title, legal or equitable, in or to any of the above mentioned property, and said party of the second part does hereby waive any and all rights under and by virtue of the ex-

103 exemption laws of the State of California or any other state or country, as to any judgment secured by the party of the first part against it for or on account of this agreement.

IN WITNESS WHEREOF, The said parties hereto have duly executed these presents, IN DUPLICATE, the day and year first above written.

No Stock Received or Delivered on Sunday or Between 4 P. M. and 8 A. M.

OCCIDENTAL CONSTRUCTION COMPANY

104

By W. W. BRIER, *Pres.*,
Party of the First Part.

UNITED STATES INDIAN SERVICE

By HUGH P. COULTIS, *Clerk & Spl. Disb. Agent*,
Party of the Second Part.

105

106 That the original petition was verified as follows:

STATE OF CALIFORNIA,

County of Los Angeles.—SS.

107 W. W. BRIER, being first duly sworn, deposes and says: That he is the president of the Occidental Construction Company, a corporation, plaintiff in the foregoing and above entitled action; that he has read the foregoing complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters herein stated upon his information and belief, and that as to those matters he believes it to be true; that he makes this affidavit for and on behalf of said corporation.

W. W. BRIER,

Subscribed and sworn to before me this 20th day of July, 1915.

(SEAL)

M. M. MEYERS,

108 *Notary Public in and for Los Angeles County, State of California.*

That the amendment to petition was verified as follows:

STATE OF CALIFORNIA,

County of Los Angeles.—SS.

W. W. BRIER, being first duly sworn, deposes and says: That he is the president of the Occidental Construction Company, a corporation, plaintiff in the foregoing and above entitled action; that he has read the

109 foregoing amendment to complaint and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated upon his information and belief, and that as to those matters he believes it to be true; that he makes this affidavit for and on behalf of said corporation.

W. W. BRIER.

Subscribed and sworn to before me this 18th day of July, 1916.

(SEAL)

M. M. MEYERS.

110 *Notary Public in and for the County of Los Angeles,
State of California.*

112 Endorsements: Original No. 396 Civil.

In the District Court of the United States, Southern District of California.

OCCIDENTAL CONSTRUCTION COMPANY, &c.,
Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

ENGROSSED AMENDED PETITION FOR MONEY
ON CONTRACT.

113 Filed Aug. 9, 1916.

WM. M. VAN DYKE, *Clerk.*

By CHAS. N. WILLIAMS, *Deputy Clerk.*

Received copy of the within Engrossed Amended
complaint this 9th day of August, 1916.

ALBERT SCHOONOVER,
Attorneys for Defendant.

Removed to Suite 1022-23-24-25, Citizens National
Bank Bldg.

114 CHAS. E. DOW and M. M. MEYERS, Attorney at
Law, 407-408-409 Henne Building, 122 W. Third St.
Tel. Home A2092, Sunset Main 2258, Los Angeles, Cal.

115 *In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

OCCIDENTAL CONSTRUCTION COMPANY,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

No. 396 Civil.

116 ANSWER TO PETITION FOR MONEY ON CON-
TRACT.

Comes now the defendant, United States of Amer-
ica, and for answer to plaintiff's petition herein, admits,
alleges and denies:

I.

117 Defendant denies that on or about the 9th day of
January, 1913, at Los Angeles, in the County of Los An-
geles, State of California, or at any other time or place,
plaintiff entered into an agreement with the defendant
whereby the plaintiff leased and hired to the defendant
certain mules and harness, or any mules and harness,
and denies that Exhibit "A" of said petition is the con-
tract, or any contract, between the plaintiff and the de-
fendant herein.

II.

Defendant denies that the defendant kept or retain-
ed the said mules and harness pursuant to said agree-
ment until the 26th day of April, 1913, and denies that
the defendant paid for the rental of said mules and har-
ness for all of said time up to and including the 31st day

118 of March, 1913, and no more, except as in said petition after paragraph III of said petition, stated.

III.

Defendant denies that the said contract, or any contract, provided that the defendant should pay for each and every head of mules crippled, injured or killed, and denies that defendant agreed to pay the plaintiff for every or any head of mules crippled, injured or killed.

IV.

119 Defendant denies that the said contract, or any contract, provided that the defendant should take extra care of said mules and equipment, or take extra care of any mules and equipment, and defendant denies that the defendant did not take extra care of the said mules and equipment.

V.

120 Defendant denies that said contract provided that in case any of said mules and equipment, or the said harness, should be lost, destroyed or rendered unfit for service, or not returned, the defendant would pay the full value thereof to the plaintiff.

VI.

Defendant denies that the said contract, or any contract, provided that in case said defendant should or did fail to comply with, or should violate any of the terms, provisions or conditions of said contract, the defendant should pay any and all necessary and proper attorney's fees expended in any action for the enforcement of any of the conditions or provisions of said contract.

121 For a further and separate defense to said first cause of action herein, the defendant alleges :

I.

That on or about the 9th day of January, 1913, the plaintiff herein delivered to the United States Indian Service at Los Angeles, in the State of California, one hundred (100) mules, and the harness, collars, pads, lines, bridles, straps, halters, chains and snaps set forth in Exhibit "A" of plaintiff's petition herein, all of said
122 property to be used by said U. S. Indian Service in certain work and construction then being carried on and conducted by said U. S. Indian Service on the Mohave Indian Reservation in the State of Arizona, and at said time one Hugh P. Coultis, Clerk and Special Disbursing Agent of said U. S. Indian Service, stationed at Los Angeles, agreed that the said U. S. Indian Service would pay to the said plaintiff herein the sum of Ten (\$10) Dollars per month per head for said mules, and that said
123 U. S. Indian Service would return said mules to the City of Los Angeles as soon as said work and construction above mentioned should be completed; that said work and construction was completed on the 9th day of April, 1913, and the said U. S. Indian Service did fully pay the said sum of Ten (\$10) per month per head for each and all of said mules from the 10th day of January, 1913, up to and including the 14th day of April, 1913, except one mule for which said rental was fully paid up to the 10th day of April, 1913, at which time said one mule died; and defendant further alleges that said mule so

124 dying sank into the mud and water and drowned while being driven with other of said mules in a careful and cautious manner, and said mule so drowned and died without any negligence whatsoever on the part of the defendant herein.

II.

That defendant further alleges that on said 10th day of April, 1913, while said mules were being driven to the railroad station to be loaded on cars for transportation to the City of Los Angeles, to be returned into the
125 custody of said plaintiff herein, the Tax Collector for the County of Mohave, in the State of Arizona, seized all of said mules then living, to-wit, ninety-nine (99) mules, the property of the plaintiff herein, and held the same under color of said office of Tax Collector of said County under a lien claimed by said officer for said State of Arizona, and said County of Mohave, for unpaid taxes thereon, and said seizure was so made by said officer without any fault or negligence on the part of the
126 defendant herein, and on said day and immediately upon the seizure of said 99 mules by said officer, the said U. S. Indian Service did notify the plaintiff herein of the seizure of said mules and of the cause of said seizure by said officer, and did notify the said plaintiff that said seizure was under color of official right and because of the non-payment of taxes on said mules then and therefore demanded by said officer; and defendant further alleges that without any fault or negligence on the part of defendant herein, or of said U. S. Indian Service, or of any officer of defendant herein or of said U. S. In-

127 dian Service, and against the will of said defendant herein, the said plaintiff herein being then and there duly notified of said seizure of said mules, the plaintiff herein refused to redeem the same or to procure the release thereof and did not redeem said mules or procure the release thereof until the 23rd day of April, 1913, at which time said plaintiff herein did pay the taxes and costs claimed and demanded by said Tax Collector of said County of Mohave, and did procure the release of
128 said mules from said seizure, and said U. S. Indian Service did then and there receive the custody of said mules, and immediately thereupon returned said mules to the City of Los Angeles, and into the custody of the plaintiff herein, and the said delivery into the custody of plaintiff herein was completed on the 26th day of April, 1913.

III.

129 Defendant further alleges that at all the times said mules and said harness were in the custody and care of the defendant herein, the same and all thereof were carefully and without any negligence whatsoever used by said U. S. Indian Service in the service and work above mentioned, and at the time of said seizure of said mules by said Tax Collector, the said mules and each and all of them, were in good condition in like manner as they were when received by the said U. S. Indian Service from the plaintiff, and at said time of the delivery of said mules back into the custody of said plaintiff herein the said 99 mules and each and all of them were in like con-

130 dition that they were when again delivered and released into the custody of the said U. S. Indian Service by the said Tax Collector of said County of Mohave, on the 23rd day of April, 1913.

ANSWER TO SECOND CAUSE OF ACTION

The defendant for answer to second cause of action set out in the plaintiff's petition herein, admits, alleges and denies:

I.

131 Defendant denies that defendant entered into an agreement with the plaintiff, as alleged in paragraph I of said second cause of action, or at all, and denies that said contract, or any contract, was in the words and figures set out in Exhibit "B" of plaintiff's petition herein.

For further and separate answer to plaintiff's second cause of action herein, the defendant alleges:

I.

132 That on or about the 10th day of January, 1913, the U. S. Indian Service received at the City of Los Angeles the blacksmith outfit, harness chest and cook outfit, tents and sundry equipment, as set out in Exhibit "B" of plaintiff's petition herein; all of said property to be used by the U. S. Indian Service on the Mohave Indian Reservation in connection with certain work and construction then being carried on by said U. S. Indian Service, for the use of which property the said Hugh P. Coultis, Clerk and Special Disbursing Agent of said U. S. Indian Service agreed to pay the sum of \$273.20 per month, and that said U. S. Indian Service so used all of

133 said property and returned all thereof to the said plaintiff, except the property set forth and listed in Exhibit "C" of plaintiff's petition herein, and said U. S. Indian Service fully paid for the use of said property.

ANSWER TO THIRD CAUSE OF ACTION.

The defendant for answer to third cause of action set out in plaintiff's petition herein, alleges as follows:

134 Defendant adopts all of its answer to plaintiff's first cause of action, as set forth in its petition herein, and makes all of said answer to said first cause of action its answer to this the third cause of action in like manner as if all of the allegations, admissions and denials of said answer to said first cause of action were fully set forth herein.

ANSWER TO FOURTH CAUSE OF ACTION

The defendant for answer to fourth cause of action set out in plaintiff's petition herein, alleges as follows:

135 Defendant adopts all of the allegations of its answer to plaintiff's second cause of action, as set forth in its petition herein, and makes each and all of the allegations, denials and admissions of said answer to said second cause of action its answer to this the fourth cause of action in like manner as if said answer to said second cause of action were fully set forth herein.

ANSWER TO FIFTH CAUSE OF ACTION.

The defendant for answer to fifth cause of action set out in plaintiff's petition herein, alleges as follows:

The defendant adopts all of its answer to plaintiff's

136 first cause of action as set forth in its petition herein, and makes each and all of the allegations, denials and admissions of said answer to said first cause of action its answer to this the fifth cause of action in like manner as if said answer to said first cause of action were fully set forth herein.

ANSWER TO SIXTH CAUSE OF ACTION.

The defendant for answer to sixth cause of action set out in plaintiff's petition herein, alleges as follows:

137 Defendant adopts its answer to plaintiff's first cause of action as set forth in its petition herein, and its answer to plaintiff's second cause of action as set forth in its petition herein, and makes each and all of the allegations, admissions and denials of said answer to said first cause of action and said second cause of action in like manner as if said answer to said first cause of action and said second cause of action were fully set forth herein.

ANSWER TO SEVENTH CAUSE OF ACTION.

138 The defendant for answer to seventh cause of action set out in plaintiff's petition herein, alleges as follows:

I.

The defendant adopts its answer to plaintiff's first cause of action set forth in its petition, and its answer to second cause of action set forth in its petition herein, and makes said answer to said first cause of action and said answer to said second cause of action its answer to said seventh cause of action in like manner as if all of

139 the allegations, denials and admissions of said answer to said first cause of action and said answer to said second cause of action were fully set forth and re-written herein.

WHEREFORE, defendant prays judgment of this Court that the plaintiff take nothing by reason of its complaint herein, and for costs incurred in this action.

ALBERT SCHOONOVER,
United States Attorney.

M. G. GALLAHER,
Assistant United States Attorney.

140

141

142 Endorsements: No. 396 Civil.
In the District Court of the United States for the South.
Dist. of California, Southern Division.
OCCIDENTAL CONSTRUCTION COMPANY,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

ANSWER TO PETITION FOR MONEY ON CON-
TRACT.

143 Filed, 191.....
 Filed Dec. 11, 1915.

WM. VAN DYKE, *Clerk.*

By T. F. GREEN, *Deputy Clerk.*

Rec'd. copy of the foregoing answer on this 11th day
of Dec., 1915.

M. M. MEYERS,
Atty. for Plff.

144

145 *In the District Court of the United States, in and for the
Southern District of California.*

OCCIDENTAL CONSTRUCTION COMPANY, a corporation organized under and by virtue of the laws of the State of California, a citizen of said State, having its principal office at Los Angeles, in the County of Los Angeles, State of California,
Plaintiff,

vs.

146 THE UNITED STATES OF AMERICA,
Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF
LAW.

147 This cause coming on regularly to be heard before the Court without a jury, Honorable Oscar A. Trippet, Judge, on the 13th day of July, 1916, and the plaintiff appearing and being present in court and represented by counsel, M. M. Meyers, Esq., and Charles E. Dow, Esq., and the defendant being represented by M. G. Gal-
laher, Assistant United States Attorney for the Southern District of California, and evidence, both oral and documentary, having been introduced on behalf of the plaintiff, and evidence, both oral and documentary, having been introduced on behalf of the defendant, and the cause having been continued from day to day and time to time, and having been argued by respective counsel and submitted, and the Court having taken the matter under advisement, and having duly considered the matter, the Court finds the facts and conclusions of law as follows:

148

I.

On the 10th day of January, 1913, the defendant, by its Department of the Interior, through its Indian Service, was engaged in certain construction work upon and for the improvement of the Mohave Indian Reservation in the State of Arizona, and one F. R. Schanck was then a Superintendent of Irrigation in the employ of the defendant in said Indian Service, and was at said time in charge of said construction work on behalf of the defendant. One H. P. Coultis was the special disbursing agent for said Indian Service, located at the City of Los Angeles, in the State of California, and was the disbursing agent for and pertaining to said construction work.

149

II.

The Occidental Construction Company was at said time and ever since has been, a corporation duly organized and existing under and by virtue of the laws of the State of California, and having its principal place of business in said City of Los Angeles, and was engaged in the business of letting mules and grading equipment for hire.

150

III.

On or about the said 10th day of January, 1913, the said plaintiff delivered to the said F. R. Schanck, as agent of the defendant, 100 mules and certain grading equipment and harness, and other personal property as set out in Exhibit "B" in plaintiff's complaint herein, for use by the said United States in its said work on said Indian Reservation, which said mules, equipment,

151 harness and personal property were necessary for said work; and said Schanck agreed in behalf of the United States to take said mules and said other personal property so delivered to him for use by the United States from the corral of plaintiff at said City of Los Angeles to said construction work on said Indian Reservation in the State of Arizona and there use the same in the prosecution of said work until the completion thereof, and that defendant should thereafter return said mules and
152 equipment to plaintiff's corral in Los Angeles. Said Schanck and the said Occidental Construction Company agreed that the price to be paid by the United States for the use of said mules should be and was the sum of \$10.00 per month for each mule, and that the price to be paid by the United States for the use of the said grading equipment, harness and other personal property so delivered to the said Schanck for the United States should be and was the sum of \$273.50 per month.

IV.

153 Said Schanck caused said mules and equipment to be transported by the United States to said Indian Reservation and there to be used by the United States upon the said construction work until the completion of said work, which said work was completed on the 10th day of April, 1913.

V.

About said 10th day of January, 1913, and after plaintiff had agreed to let the mules and equipment to defendant, but before they had been delivered, plaintiff called the attention of said Schanck to certain blank

154 forms of contract and told the said Schanck that in all cases of letting any of their mules or equipment the terms of letting as to the care, use and return of the property were those contained in such forms of contract, and said Occidental Construction Company would not let such property to any person, nor even to the United States Government, except upon such terms and conditions and upon the signing of such written contract, and that in all cases they required such forms of contract to be signed by the hirer. Said Schanck replied
155 that he had no legal authority to sign such a contract and he believed nobody but the Secretary of the Interior would have such authority, but that he was constantly hiring mules for the Government and that these mules and the equipment were needed at once and that he supposed that he would sign the contracts. The statement of said Schanck that he was constantly hiring mules for the government and that these mules and the equipment were needed at once was true. Such contracts afterwards were prepared by the plaintiff and forwarded to
156 said Schanck by mail. Shortly thereafter and about the middle of January, 1913, the contracts were returned bearing the signature "United States Indian Service, Hugh P. Coultis, Clk. and Spl. Disbursing Agent." Exhibits "A" and "B" annexed to plaintiff's petition are copies of said contracts signed by said Coultis. Said Coultis was directed by said Schanck to sign said contracts and signed the same as above set forth with his knowledge. On or about the 30th day of January, 1913, plaintiff and the said Schanck executed the formal offer

157 and acceptance memorandum authorized by the Secretary of the Interior for the hiring of animals and other personal property by said Indian Service. The price to be paid for the use of the mules and equipment was the same in the offer and acceptance memorandum as in said contracts, Exhibits "A" and "B", and said formal offer and acceptance was used as the basis of the disbursement of all funds of the United States applied to the payment of the hire of said mules and other personal property, by the said Hugh P. Coultis, Special Disbursing Agent of said Indian Service.

158

VI.

The said Mohave Indian Reservation has been set apart by an act of the Congress of the United States as a reservation for the habitation and use of Indians, and it was so inhabited and used at the time said mules were working thereon. The said work then being done by the United States thereon and in which said mules were used was the work of constructing a dike for the improvement and betterment of said reservation and for the benefit of the Indians living thereon. Said work had been authorized by an act of Congress and Congress had made an appropriation therefor. Said reservation is within the territorial limits of the County of Mohave, in the said State of Arizona.

159

VII.

On or about the 7th day of March, 1913, the County Assessor of the County of Mohave, State of Arizona, assessed upon said mules and equipment state and county taxes. The amount of said taxes so assessed was \$415.14.

160 The valuation placed upon said mules by the Assessor was \$100 per head, and the value of said mules was not less than \$100 per head. Said mules and equipment at the time of said assessment were upon said Reservation and were in the custody of the United States and were being used upon said work. Prior to the time when said County Assessor took possession of said mules, as hereinafter set forth, said mules and equipment, while
161 within the territorial limits of the State of Arizona, were at all times upon said Reservation, which is within the territorial limits of said Mohave County, and in use upon said work, excepting only while they were in transit from the California state line to said Indian Reservation and while they were in transit being returned from said Reservation for the purpose of being taken back by the United States to the plaintiff in California, and at all times until so taken possession of by said Assessor said mules and equipment were in the custody of the United States.

VIII.

162 Said work on said Reservation was finished on or about the 10th day of April, 1913, and thereupon said mules were driven from said Reservation to the railroad station at Topock, in said Mohave County, for the purpose of being shipped by the United States from there to Los Angeles. Said mules while being driven to Topock were in the custody of a person directed by said Schanck to drive the said mules to said station, and who was in the employ of the United States. While being so driven from the Reservation to Topock one of said

163 mules was drowned without negligence upon the part of any person. When the remaining 99 of said mules had reached Topock, and were then and there in the custody of a person in the employ of the United States, the County Tax Assessor of said Mohave County stated to said person that he would take possession of said mules. Said person replied to said Assessor, "that releases me and if said Assessor was an officer he would turn them over to him and go back to Needles." Neither said person nor any one else on behalf of defendant then made
164 any objection to said Assessor's taking possession of said mules, nor did anything to prevent it. Said assessor thereupon took possession of said 99 mules under a claim of lien because of said alleged tax and continued in possession thereof until on or about the 23rd day of April, 1913. It is provided by Arizona Civil Code, Section 4872, that in the event that an owner of personal property shall fail to pay the taxes assessed thereon, the Assessor "shall seize sufficient of said personal prop-
165 erty to satisfy the taxes and costs."

The plaintiff was notified by the employees of the defendant soon after said Assessor had taken possession of said stock that he had so taken possession, and shortly thereafter plaintiff communicated with said Schanck in relation thereto and was informed by said Schanck that he had taken the matter up with the United States District Attorney at Phoenix and that he expected to be able to secure the release of the stock without the payment of said alleged taxes. This expectation on the part of said Schanck and of the plaintiff continued

166 until on or about the 23rd day of April, 1913. On or about April 15, 1913, plaintiff informed defendant that if it was necessary to pay the tax to prevent a sale it would advance the money. Said Schanck replied requesting that plaintiff send the money, but saying that he would not pay it over unless necessary. On April 16 plaintiff sent to said Schanck sufficient money to pay the tax, together with the penalties then due, with the request that if he must pay the tax he do so under protest. During the period from the 10th to the 23rd of April said Schanck
167 was engaged more or less continuously in an effort to secure the release of the mules without payment of the alleged tax. On said April 23rd the plaintiff paid to a representative of the United States a further sum sufficient to pay the amount of said alleged tax, together with the costs and expenses then due, to wit: \$825.94. Said sum was on said day paid under protest by the representative of the United States to said Tax Assessor, and the United States regained possession of said
168 stock and forthwith loaded the same into cars for the purpose of transporting the same to Los Angeles and there delivering the same to the plaintiff. Thereafter a refund of \$225.00 was received by plaintiff from said County Assessor on account of said tax. The reason of said refund was a reduction in the tax rate.

IX.

While said mules were in the possession of the United States on said Reservation and were being used for said work thereon, they were properly fed. They were so negligently used, however, that the shoulders of

169 some of them were bruised and their necks were made sore to an extent beyond what would have resulted if proper care had been taken of them while they were being used in said work. While they were in the possession of the County Assessor the mules received no grain. During the day they were taken out to graze on the hills and at night when they were brought back to the corral some hay was given to them. During this period, however, they did not receive sufficient food, and in fact were nearly starved.

170 A man recommended by the plaintiff has charge of the corral from the time that the mules went to work on the Reservation until he left the job three or four weeks before the 5th of April, 1913. From the 5th of April to the 10th of April another man recommended by the plaintiff had charge of said corral. In each case this man was in the employ of the United States and was paid by the United States, and it was expressly stipulated between the plaintiff and the defendant that said man should be subject to the orders of the United States
171 foreman on the work who was in charge of said mules. Neither of these men had anything to do with the driving or working of the mules, nor did either of them have the decision of the amount of work to be done by the mules or the amount of feed to be given. Neither of said men was in any respect negligent in relation to said mules. The second man referred to made a report to the plaintiff regarding the condition of the necks and shoulders of the mules, but at the same time reported that the work was practically finished and that the mules would

172 be taken from the Reservation in three or four days;
the mules were in fact taken off within two or three days
after the said report was received by the plaintiff.

X.

The condition of the mules when they were delivered
by the United States to the plaintiff in Los Angeles was
due to their bruised necks and sore shoulders, as here-
inbefore stated, and to their improper feeding while in
the charge of the County Tax Assessor. During the
173 plaintiff sent a telegram to said Schanck inquiring wheth-
er the mules were being properly fed, to which Schanck
replied "mules being fed." Plaintiff had no knowledge
that they were not being properly fed while in the cus-
tody of said Assessor. Said mules on their arrival in
said City of Los Angeles were deteriorated in strength
and flesh and were weak and emaciated, and unfit for
work. Twenty-one of said mules had sore shoulders and
sore necks, and on account thereof plaintiff was not able
174 to use said twenty-one mules until the 1st day of June,
1913.

XI.

Certain harness of the value of \$48.42 was not re-
turned by defendant to plaintiff. Certain grading equip-
ment of the value of \$42.78 was not returned by defend-
ant to plaintiff, and certain other grading equipment was
damaged through the negligence of the servants of the
defendant to the extent of \$70.06.

XII.

Defendant paid to the plaintiff in monthly payments

175 beginning in February, 1913, the rental value at the rate of \$10.00 per month per mule of all of said mules from the 10th day of January, 1913, up to and including the 26th day of April, with the exception of the period from the 11th day of April to the 23rd of April, 1913, during which time the said mules were in the custody and care of the said Assessor of said Mohave County, Arizona; said sum of \$10.00 per head per month was the fair and reasonable rental value of said mules. Defendant has never paid any rental for said mules for said last mentioned period. Defendant likewise paid the rental value of all of the said personal property other than said mules so delivered to said Indian Service from the 10th day of January, 1913, up to and including the day said other personal property was delivered to the plaintiff in the said City of Los Angeles.

XIII.

177 Neither the said Schanck nor the said Coultis had authority to make, execute or deliver the contracts set out in Exhibits "A" and "B" annexed to plaintiff's petition, nor either of them. There was no ratification of said written contracts, or either of them, on the part of the United States. There was no estoppel against the United States to deny the validity of said written contracts, or either of them.

XIV.

The plaintiff paid the sum of \$3.00 for the services of a man to unload said 99 mules and deliver them at the corral of plaintiff in the City of Los Angeles on the 26th day of April, 1913, and likewise paid the sum of \$12.50

178 for the services of men to unload the personal property
other than said mules and deliver it to the plaintiff at
its corral in said City of Los Angeles; said men were
employed by plaintiff to do this work at the request of
said defendant. By reason of breakage in the grading
equipment so had and used by the said Indian Service,
which breakage was the result of the lack of ordinary
care on the part of the persons using the same in the
employ of the said Indian Service, the said grading
179 equipment was damaged in the sum of \$70.06; the said
personal property so received by the said Indian Ser-
vice, but not returned to the plaintiff, was of the value
of \$91.20.

CONCLUSIONS OF LAW:

WHEREFORE, as a conclusion of law from the
foregoing facts, the Court finds that the plaintiff is en-
titled to judgment against the defendant for the sum of
One Hundred Seventy-six & seventy-hundredths Dollars
(\$176.00) and no more, and it is so ordered.

180

OSCAR A. TRIPPET,
United States District Judge.

181 Endorsements: No. 396 Civil.

*In the District Court of the United States for the Sou.
Dist. of California.*

OCCIDENTAL CONSTRUCTION COMPANY, a Cor-
poration,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

182 FINDINGS OF FACT AND CONCLUSIONS OF
LAW.

Filed, 191.....

Filed Oct. 25, 1916.

WM. M. VAN DYKE, *Clerk.*

By CHAS. N. WILLIAMS, *Deputy Clerk.*

183

184 *In the District Court of the United States in and for
the Southern District of California, Southern
Division.*

OCCIDENTAL CONSTRUCTION COMPANY, a cor-
poration organized under and by virtue of the
laws of the State of California, a citizen of said
State, having its principal office at Los Angeles,
in the County of Los Angeles, State of California,
Plaintiff,

vs.

185 THE UNITED STATES OF AMERICA,
Defendant.

JUDGMENT.

186 This cause coming on regularly to be heard before
the Court without a jury, Honorable Oscar A. Trippet,
Judge, on the 13th day of July, 1916, and the plaintiff ap-
pearing and being present in court and represented by
counsel, M. M. Meyers, Esq., and Charles E. Dow, Esq.,
and the defendant being represented by M. G. Gallaher,
Assistant United States Attorney for the Southern Dis-
trict of California, and evidence, both oral and docu-
mentary, having been introduced on behalf of the plain-
tiff and of the defendant, and the cause having been
continued from day to day and from time to time, and
having been argued by respective counsel and submitted
to the court for its consideration and decision, and the
court, after due deliberation thereon, having made and
filed its findings and decision in writing and ordered that
judgment be entered in accordance therewith.

187 NOW THEREFORE, by virtue of the law and by reason of the premises aforesaid,

188 IT IS CONSIDERED BY THE COURT, that the plaintiff, Occidental Construction Company, a corporation organized under and by virtue of the laws of the State of California, a citizen of said State, having its principal office at Los Angeles, in the County of Los Angeles, State of California, do have and recover of and from the defendant, UNITED STATES OF AMERICA, the sum of One Hundred Seventy-six & seventy-hundredths Dollars (\$176.70), together with its costs which were necessarily incurred and expended in establishing its claim to the following items mentioned in paragraph XIV of the findings, to-wit: \$3.00 for services of a man to unload and deliver the mules mentioned therein, \$12.50 for the services of a man to unload the personal property other than said mules and to deliver same to the plaintiff, and \$70.06 for breakage, taxed at the sum of \$43.80.

189 Judgment entered this 11th day of November, 1916.

WM. M. VAN DYKE,

Clerk.

By LESLIE S. COLYER,

Deputy Clerk.

190 Endorsements: No. 396 Civil.

*In the District Court of the United States for the Sou.
Dist of California, Southern Division.*

OCCIDENTAL CONSTRUCTION COMPANY, a Cor-
poration,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

191 COPY OF JUDGMENT.

Filed Nov. 11, 1916.

WM. VAN DYKE, *Clerk.*

By LESLIE S. COLYER, *Deputy.*

2 Judg. Reg. 384.

192

193 *In the District Court of the United States, in and for the
Southern District of California, Southern Division.*

OCCIDENTAL CONSTRUCTION COMPANY,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 396 Civil.

PETITION FOR WRIT OF ERROR.

194 Comes now the plaintiff herein and says that on the
11th day of November, 1916, this Court entered judgment
herein in favor of the plaintiff and against the defendant
for the sum of One Hundred Seventy-six & seventy-hun-
dredths Dollars (\$176.70) damages and Forty-three &
eighty-hundredths Dollars (\$43.80) costs, in which judg-
ment and the proceedings at and prior thereto in this
cause certain errors were committed to the prejudice of
this plaintiff, all of which will more in detail appear from
the assignment of errors which is filed with this petition.

195 WHEREFORE, this plaintiff prays that a writ of
error may issue in this behalf out of the United States
Circuit Court of Appeals for the Ninth Circuit for the
correction of errors so complained of, and that a tran-
script of the record and proceedings and papers in this
cause, duly authenticated, may be sent to said Circuit
Court of Appeals.

M. M. MEYERS,
CHARLES E. DOW,
Attorneys for Plaintiff.

196 Endorsements: Original No. 396 Civil.

*In the District Court of the United States, Southern
District of California, Southern Division.*

OCCIDENTAL CONSTRUCTION COMPANY,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

PETITION FOR WRIT OF ERROR.

197 Received copy of the within Petition this 29th day
of Jan., 1917.

ROBERT O'CONNOR,

Attorney for Defendant.

Filed Feb. 19, 1917.

WM. VAN DYKE, *Clerk.*

By LESLIE S. COLYER, *Deputy Clerk.*

198 Removed to Suite 1022-23-24-25 Citizens National
Bank Bldg. M. M. Meyers and Charles E. Dow, Attor-
ney at Law. 407-408-409 Henne Building, 122 W. Third
St., Los Angeles, Cal. Tel. Home A2092, Sunset Main
2258.

199 *In the District Court of the United States, in and for the
Southern District of California, Southern Division.*

OCCIDENTAL CONSTRUCTION COMPANY,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 396 Civil.

AMENDED ASSIGNMENT OF ERRORS.

200 The plaintiff in this action in connection with the
petition for writ of error herein makes the following
amended assignment of errors, by leave of court first
had and obtained, which it avers occurred in the trial,
proceedings and judgment in this cause, to-wit:

I.

The Court erred in its conclusions of law, and said
conclusions are incorrect and erroneous and inconsistent
with and not supported by the findings of fact.

II.

201 The Court erred in holding that the defendant was
not liable for injuries done to plaintiff's mules while said
mules were in the actual possession of the defendant and
in use by the defendant on the Mohave Indian Reserva-
tion.

III.

The Court erred in failing to award plaintiff dam-
ages for the injuries found by the Court to have been
done to plaintiff's mules while said mules were in the
actual possession of the defendant and in use by defend-
ant on the Mohave Indian Reservation.

202

IV.

The Court erred in holding that the defendant was not liable for the injuries done to plaintiff's mules while said mules were in actual possession and custody of the County Assessor of Mohave County, Arizona.

V.

203

The Court erred in failing to award plaintiff damages for the injuries found by the Court to have been done to plaintiff's mules while said mules were in the actual possession and custody of the County Assessor of Mohave County, Arizona.

VI.

The Court erred in failing to award plaintiff any sum as rental for the mules while they were in the custody of the County Assessor of Mohave County, Arizona.

VII.

204

The Court erred in failing to award plaintiff any damages because of the amount plaintiff paid to the County Assessor of Mohave County, Arizona, for feed and transportation of feed and for care of the mules while they were in the custody of the County Assessor of said Mohave County, Arizona, and for the alleged tax.

VIII.

The Court erred in finding judgment for the plaintiff for only One Hundred Seventy-six & seventy-hundredths Dollars (\$176.70) and not for the damages suffered by plaintiff because of the injuries to the mules while in the actual possession of the defendant and in use by the defendant on Mohave Indian Reservation and while in pos-

205 session of the County Assessor of Mohave County, Arizona, and said judgment is inconsistent with the findings of fact and with defendant's admissions in the pleadings.

M. M. MEYERS,
CHARLES E. DOW,
Attorneys for Plaintiff.

206 Endorsements: Original. No. 396 Civil.
In the District Court of the United States, Southern District of California, Southern Division.

OCCIDENTAL CONSTRUCTION COMPANY,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

AMENDED ASSIGNMENT OF ERRORS.

207 Received copy of the within amended assignment of errors this 26th day of February, 1917.

ALBERT SCHOONOVER,
Attorney for Defendant.

Filed Feb. 27, 1917.

WM. VAN DYKE, *Clerk.*

By R. S. ZIMMERMAN, *Deputy Clerk.*

M. M. MEYERS and CHARLES E. DOW, Suite 1022-23-24-25, Citizens National Bank Bldg., Los Angeles, Cal. Phone Home 10131, Sunset Main 5017.

208 *In the District Court of the United States, in and for the
Southern District of California, Southern Division.*

OCCIDENTAL CONSTRUCTION COMPANY,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 396 Civil.

ORDER ALLOWING WRIT OF ERROR.

209 On this 19th day of February, 1917, came the plain-
tiff, by its attorneys, and filed herein and presented to
the Court its petition praying for the allowance of writ
of error and assignment of errors intended to be urged
by it, praying also that a transcript of the record and
the proceedings and papers upon which the judgment
herein was rendered, duly authenticated, may be sent to
the United States Circuit Court of Appeals for the Ninth
Judicial District, and that such other and further pro-
ceedings may be had as may be proper in the premises.

210 IN CONSIDERATION WHEREOF the Court doth
allow the writ of error upon the plaintiff's giving bonds
according to law in the sum of Three Hundred Dollars.

TRIPPET,

Judge.

211 Endorsements: Copy. No. 396 Civil.

*In the District Court of the United States, Southern
District of California, Southern Division.*

OCCIDENTAL CONSTRUCTION COMPANY,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER ALLOWING WRIT OF ERROR.

212 Received copy of the within Order this..... day of
....., 1917.

Attorney for Defendant.

Filed Feb. 19, 1917.

WM. M. VAN DYKE, *Clerk.*

By LESLIE S. COLYER, *Deputy Clerk.*

213 Removed to Suite 1022-23-24-25, Citizens National
Bank Bldg. M. M. Meyers and Charles E. Dow, Attor-
ney at Law, 407-408-409 Henne Building, 122 W. Third
St. Tel. Home A2092, Sunset Main 2258, Los Angeles,
Cal.

214 *In the District Court of the United States, Southern District of California, Southern Division.*

OCCIDENTAL CONSTRUCTION COMPANY,

Plaintiff.

vs.

UNITED STATES OF AMERICA,

Defendant.

BOND.

KNOW ALL MEN BY THESE PRESENTS: That
215 we, the Occidental Construction Company, a corporation, as principal, and W. W. BRIER and F. R. MITCHILL, as sureties, are held and firmly bound unto the United States of America, the defendant above named, in the sum of Three Hundred Dollars (\$300.00), to be paid to the said United States of America, to which payment well and truly to be made, we bind ourselves, our heirs and executors, jointly and severally by these presents.

216 Sealed with our seal and dated this 15th day of February, 1917.

WHEREAS, the above named plaintiff, the Occidental Construction Company, has sued out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment entered in the above entitled cause on the 11th day of November, 1916, by the District Court of the United States, Southern District of California, Southern Division:

NOW, THEREFORE, the conditions of this obligation are such that if the above named Occidental Con-

217 struction Company shall prosecute said writ of error to effect and answer all costs and damages, including just damages for delay and cost and interest on the appeal if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and virtue.

OCCIDENTAL CONSTRUCTION COMPANY,

By W. W. BRIER, President.

W. W. BRIER,

F. R. MITCHILL.

218 STATE OF CALIFORNIA,

County of Los Angeles.—SS.

W. W. BRIER and F. R. MITCHILL, the sureties whose names are subscribed to the above undertaking, being severally duly sworn, each for himself, says:

That he is a resident and householder in the County of Los Angeles, State of California, and is worth the sum in said undertaking specified, as the penalty thereof, over and above all his just debts and liabilities, exclusive

219 of property exempt from execution.

W. W. BRIER,

F. R. MITCHILL.

Subscribed and sworn to before me this 15th day of February, 1917.

(SEAL)

M. M. MEYERS,

*Notary Public in and for the County of Los Angeles,
State of California.*

Approved this 19th day of February, 1917.

TRIPPET,

District Judge.

220 Endorsements: No. 396 Civil.

In the District Court of the United States, Southern District of California, Southern Division.

OCCIDENTAL CONSTRUCTION COMPANY,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

BOND ON WRIT OF ERROR

221 Filed Feb. 19, 1917.

WM. M. VAN DYKE, *Clerk.*

By LESLIE S. COLYER, *Deputy Clerk.*

Removed to Suite 1022-23-24-25, Citizens National Bank Bldg.

M. M. Meyers and Chas. E. Dow, 407-408-409 Henne Building, 122 W. Third St. Tel. Home A2092, Sunset Main 2258, Los Angeles, Cal.

222

223 *In the District Court of the United States for the Southern District of California, Southern Division.*

OCCIDENTAL CONSTRUCTION COMPANY,

vs.

UNITED STATES OF AMERICA,

STIPULATION AS TO PRINTING RECORD.

IT IS HEREBY STIPULATED AND AGREED by
and between the parties hereto that the parts of the
224 record in this case hereinafter designated are the only
parts material to the assignments of error made in this
case, and that only the said designated portions of the
record need be printed. The parts so designated are as
follows:

1. Engrossed amended petition for money on contract. (Without items of list of mules and equipment.)
2. Answer to petition for money on contract.
- 225 3. Findings of fact and conclusions of law.
4. Judgment.
5. Petition for writ of error.
6. Amended assignment of errors.
7. Order allowing writ of error.
8. Bond.
9. Writ of error.
10. Citation.

M. M. MEYERS,
CHARLES E. DOW,

Attorneys for Plaintiff and Plaintiff in Error.

226

ALBERT SCHOONOVER, *U. S. Atty.*,
By ROBERT O'CONNOR, *Asst. U. S. Atty.*
Attorney for Defendant and Defendant in Error.

Endorsements: Copy. No. 396 Civil.

*In the District Court of the United States, Southern Dis-
trict of California, Southern Division.*

OCCIDENTAL CONSTRUCTION COMPANY, a cor-
poration,

227

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

STIPULATION AS TO PRINTING RECORD.

Filed Feb. 27, 1917.

WM. M. VAN DYKE, *Clerk.*

By R. S. ZIMMERMAN, *Deputy Clerk.*

228

M. M. Meyers and Charles E. Dow, Suite 1022-23-24-
25, Citizens National Bank Bldg., Los Angeles, Cal.
Phone: Home 10131, Sunset Main 5017.